

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      SEPT. 2, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Janis Ian

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Serial No. 75/155,657

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Jill M. Pietrini of Manatt, Phelps & Phillips, LLP. for  
Janis Ian.

Joyce A. Ward, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

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Before Seeherman, Hairston and Walters, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

On August 26, 1996 Janis Ian filed an application to  
register the mark RUDE GIRL and design as shown below for  
"music publishing services."<sup>1</sup>

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<sup>1</sup> Application Serial No. 75/155,657 alleging dates of first use  
at least as early as March 1995.

The application stated that the mark is used "on advertising, brochures, promotional materials, and in other ways customary to the trade." As specimens, applicant submitted copies of what it terms a music biography on which RUDE GIRL and design appears.

The Examining Attorney, in her first Office Action, held that "[t]he specimens are unacceptable as evidence of actual service mark use because the specimens are promotional materials which display the applicant's mark but fails (sic) to show the mark used in connection with the identified music publishing services." The Examining Attorney then required that applicant submit substitute specimens.

Applicant, in its response, submitted copies of an insert from one of applicant's audio cassettes on which RUDE GIRL and design appears. Applicant argued that both the original and substitute specimens showed use of the

mark in connection with music publishing services. The Examining Attorney found that the substitute specimens were unacceptable and made final the requirement for acceptable specimens.

Applicant has appealed from the requirement. The case has been fully briefed, but an oral hearing was not requested.

The Examining Attorney maintains that the original specimens are no more than letterhead stationery and in the absence of a specific reference to applicant's music publishing services, are not acceptable specimens.

According to the Examining Attorney, this material merely describes applicant, the artist, and does not evidence the sale or advertisement of music publishing services.

The first page, along with other excerpts from the original specimens, are reproduced below, in reduced size:

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Applicant, in urging reversal of the refusal to register, points out that she writes or co-writes all of her songs and that she operates her music publishing services under the mark RUDE GIRL and design. According to applicant, music publishing consists primarily of licensing songs to other persons to use, perform, or record in exchange for payment. Applicant's services are directed to performance rights societies, the music industry, and the motion picture and television industries. Applicant maintains that the music publishing industry is unusual in that music publishers do not advertise in the traditional sense, for example, they do not place advertisements in trade journals. According to applicant, one method by which music publishers "advertise" their services is by distributing written materials, such as a music biography, which lets potential customers know what songs are available for use. Applicant maintains that "[her] music biography, which is distributed to third parties, identifies the songs that are available for license and therefore, operates as an 'advertisement' of Applicant's music publishing services." (Brief, p. 12).

With respect to the Examining Attorney's argument that the specimens are letterhead stationery, we are cognizant of the Trademark Manual of Examining Procedure, Section

1301.04, which provides, in pertinent part, that "[l]etterhead stationery or business cards bearing the mark may be accepted if the services are clearly indicated thereon." However, this is not a situation where the specimens are simply letterhead stationery. Here, the specimens bear more than just the mark and a company name and address. In particular, they bear information about applicant's musical background, the specific songs she has written, and previous users of her songs. Applicant states that she has distributed this music biography to third parties interested in using her songs.

Granted, the distribution of a biography is an unusual method of advertising services. Generally speaking, a biography or other written material about an applicant, would not constitute acceptable specimens of service mark use. Nonetheless, in this case, it appears that the distribution of a music biography which includes the songs that are available for use by other persons is a customary method by which music publishers advertise their services. There is nothing in this record to the contrary. Potential purchasers of applicant's music publishing services would, therefore, understand that applicant's music biography is an advertisement for those services.

Finally, we should point out that TMEP Section 1301.04, on which the Examining Attorney relies, also states that "[g]enerally, the applicant is able to submit more varied types of specimens in a service mark application [than in an application involving goods] . . . ." In this case, when we consider that it is the practice for music publishers to advertise their services by distributing a music biography such as the one submitted by applicant and the fact that RUDE GIRL and design appears on applicant's music biography, we find that the original specimens are acceptable.

In view of our decision herein, we need not reach the question of whether the substitute specimens, i.e., the cassette inserts, are acceptable. We note, however, that there is nothing in this record to indicate that it is the practice of music publishers to advertise their services by distributing cassettes of their music.

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**Decision:** The refusal to register is reversed.

E. J. Seeherman

P. T. Hairston

C. E. Walters  
Administrative Trademark Judges  
Trademark Trial and Appeal Board